political in its character merely because done in the course of a political rising,[24] any more than would a rape committed by a soldier in time of war. But in dealing with acts of violence directly connected in nature, time, and place with a real rebellion, judges have been reluctant to go into the question of motive, and have regarded it sufficient that it was incidental to the conflict.[25] There has, moreover, been little tendency to consider whether or not the act was a breach of the rules of war.[26] Publicists have suggested that this should be considered and that courts should be free to draw the line between acts abhorrent to common notions of law and morality and those reasonably demanded in warfare.[27] As the problem under discussion is the interpretation of a vague, general phrase in a treaty or statute, this suggestion is open to no legal objection. It is rather astounding to find that in all the cases in English-speaking countries where a fugitive has asserted that his crime had a political character, in only three [28] has the defense failed to prevail. The outcome of the principal case is consequently encouraging.

THE GRANDFATHER CLAUSE AND THE FIFTEENTH AMENDMENT. — The constitutions or statutes of several Southern states require an educational or property qualification for suffrage, but except from that requirement descendants of persons who were entitled to vote in any of the United States prior to some date before the adoption of the Fifteenth Amendment.[1] The words "on account of" in that amendment might logically be so construed as to make motive determine constitutionality. Judged by that standard, these Grandfather clauses would be bad, for they were enacted from a desire to disfranchise as many negroes and as few whites as possible.[2] On the same reasoning, Southern laws disfranchising for pauperism, non-payment of poll-tax,[3] conviction of chicken-stealing,[4] or even illiteracy, would be bad. The inconvenience of having the same statute unconstitutional if enacted at one time and place, and constitutional if enacted at another time and place, and the difficulty of deciding the motive for a law when its makers were actuated by various motives, seem fatal objections to this construction.[5]

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[24] See *In re* Castioni, *supra*, 164, 165.

[25] See *In re* Ezeta, *supra;* BENJAMIN, St. ALBANS RAID, 454, 455.

[26] See *In re* Ezeta, *supra*, 997, 1002; BENJAMIN, ST. ALBANS RAID, 458. But see In Matter of Burley, *supra*.

[27] See LAWRENCE, INTERNATIONAL LAW, 238; OPPENHEIM, INTERNATIONAL LAW, 395 *et seq.*, and Resolutions of the Institute of International Law, 1880 and 1892, WESTLAKE, INTERNATIONAL LAW, 246.

[28] These are *In re* Meunier, *supra* (anarchist); In Matter of Burley, *supra* (seizure of steamer by persons claiming to be Confederate officers); and the principal case. In the case of The Chesapeake, *supra*, the prisoners were discharged for technical reasons, but the offense (similar to that in In Matter of Burley) was not considered political.

[1] LA. CONST (1898), Art. 197, § 5 (son or grandson); N. C. CONST. (amended 1900), Art. VI, § 4 (lineal descendant).

[2] For some pertinent extracts from the debates in the Louisiana constitutional convention, see 13 HARV. L. REV. 279.

[3] See United States *v.* Reese, 92 U. S. 214.

[4] See KY. CONST. § 145; Diamond *v.* Commonwealth, 124 Ky. 418.

[5] See Williams *v.* Mississippi, 170 U. S. 213, 223.

Assuming the Fifteenth Amendment to be valid,[6] and its application to extend beyond Congressional elections,[7] the state law would be clearly unconstitutional if it expressly made race the test. Practically all white people and practically no negroes in Maryland come within the Grandfather clause. Accordingly that section of the Maryland suffrage statute is held to violate the Fifteenth Amendment. *Anderson* v. *Myers*, 182 Fed. 223 (Circ. Ct., D. Md., Oct. 28, 1910).[8] Nevertheless, a few descendants of free negroes come within the Grandfather clause and a few descendants of white immigrants do not. Laying stress on those facts, the Supreme Court of Oklahoma decided, two days before the federal decision, that a similar provision in the constitution of that state does not take away the right to vote on account of race or color. *Atwater* v. *Hassett*, 111 Pac. 802 (Okla.).[9] Probably no slave was ever entitled to vote in any of the United States.[10] The effect, therefore, of the clause is exactly the same as if it had imposed the stricter requirement upon any person of whom it is not true that he or some of his ancestors were free in this country before 1866, and upon certain other classes of persons. Stated so, it is obviously a discrimination on account of previous condition of servitude, unless the words of the amendment mean the "race, color, or previous condition of servitude" of the person so deprived. Even then, persons who were themselves slaves and who would otherwise have been entitled to vote before 1866 would have constitutional ground for complaint.[11]

This type of Grandfather clause is to be distinguished from that which excepts from the stricter requirements descendants of soldiers or sailors who served in any of the wars of the United States.[12] Whatever may be said of the validity of the latter under other sections of the Constitution, it seems open to no objection based on the Fifteenth Amendment.

DEBENTURE BONDS. — Debentures,[1] as direct charges upon the earnings of a corporation, are products of the industrial development of the

[6] For an ingenious argument against its validity, see 23 HARV. L. REV. 169.

[7] See *id.* 192.

[8] The U. S. Supreme Court has never passed on the validity of the Grandfather clauses. In Giles *v.* Harris, 189 U. S. 475, the plaintiff was not entitled to registration even if the scheme was unconstitutional. See 17 HARV. L. REV. 130.

[9] A possible ground for distinction is to be found in the difference of language used in the two provisions. The Maryland clause excepts "lawful" descendants, whereas the Oklahoma clause excepts "lineal" descendants. It is a fact so notorious that a court might well take judicial notice of it, that many negroes are lineal descendants of men entitled to vote before 1866, and but few of them are lawful descendants of such ancestors.

[10] This point was repeatedly insisted upon by Senator Pritchard arguing in behalf of his resolution to declare the Grandfather clause unconstitutional. The resolution was debated at length in the United States Senate in 1900, was referred, came out of committee a mere resolution to investigate, and expired with the session. 33 CONG. RECORD, *passim*.

[11] One of the plaintiffs in the federal case was born in 1834.

[12] ALA. CONST. (1901), § 180 (lawful descendants); VA. CONST. (1902), § 19 (son).

[1] The word "debenture" is used in at least eight different senses. It will be used here in the sense of a floating mortgage which charges with payment a company's "undertaking, including the good will of the business, and all its property and assets whatsoever and wheresoever, both present and future." Debentures are issued under the authority of four acts of Parliament, the principal ones being the Mortgage Debenture